

Remarks

This communication is responsive to the Office Action of February 28, 2008. Reexamination and reconsideration of the claims is respectfully requested.

The application has been unintentionally abandoned by the applicant. A petition to revive and the appropriate fees are submitted herewith.

Summary of The Office Action

Claims 23-34 were rejected under 35 U.S.C. 103(a) as purportedly being unpatentable over Drainville et al U.S. Patent No. 6,785,724 (Drainville), in view of King U.S. Patent No. 6,317,831 (King).

To establish a prima facie case of 35 U.S.C. §103 obviousness, basic criteria must be met. The prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.(A) Section 2131 of the MPEP recites how "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). This same standard applies to 103 rejections as evidenced by Section 2143(A) of the MPEP, which reads: "The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements** were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions".

Independent Claim 23

Claim 23 recites “waking the portable computer from a **sleep mode**” and “returning the portable computer to the **sleep mode**.” As used in the specification, sleep mode refers to a low power state used to “conserve power” (Specification page 2 line 3). Additionally, a “sleep mode” is well known to those of ordinary skill in the art as being a low power state and/or a hibernating state of a computing device. Claims must be “given their broadest reasonable interpretation consistent with the specification.” MPEP 2111.

The combination of Drainville and King fails to teach or suggest “waking the portable computer from a sleep mode” in combination with the other claimed elements. The office action relies on King only to teach a handheld device (OA, page 3, 2nd paragraph). Thus, Drainville was relied upon for all other claimed elements.

The OA cites Drainville col. 1, lines 62-64 as teaching the “waking the portable computer from a sleep mode.” (OA, page 2). Applicant respectfully submits that it does not. A reference must be considered in its entirety (MPEP 2141.02). For example, MPEP 2141.02, VI, states:

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)

When Drainville is read in its entirety, the “wake-up connection” and “wake-up call” means that it connects the modem 16 to the internet when no internet connection was previously connected. Drainville states:

Aspects of the invention can include one or more of the following features. The system can have a client system to initiate requests for accessing the on-demand web server. The on-demand web server can be connected to the Internet after receiving a wake-up call from the tapping web server.

(Drainville, Summary of Invention, Col. 2, lines 35-38) (emphasis added)

The “wake-up” call causes the web server 22 to connect to the Internet. The wake-up call does not wake the server from a sleep mode. There is no teaching or suggestion that the web server 22 is ever in a sleep mode. Quite the contrary. Upon considering Drainville in its entirety, it discloses that the server 22 provides vital information. Drainville teaches an “Internet-enabled cooling or boiler water treatment controller ... used for monitoring and controlling” water quality (Drainville Col. 7, lines 51-53). The server 22 provides “vital information” for controlling water quality (Drainville Col. 7, lines 50-56). Therefore since vital information is provided, one of ordinary skill would understand that the server is not in a “sleep mode” but rather is continuously operating to provide the vital information.

Additionally, the purpose of Drainville is to reduce monthly phone line charges resulting from being continuously connected to the internet. This teaches that the server 22 is continuously operating but that it is not desired to have a continuous internet connection:

“since the web server is not required to be continuously on-line, exorbitant metered or unlimited monthly phone line usage charges are avoided.” (Drainville Col. 4, lines 15-18).

Therefore, there is no teaching or suggestion that the web server 22 is ever in a sleep mode. Also, a wakeup call to make an internet connection does not teach or suggest waking a computer from a sleep mode as claimed. These are two

completely different and unrelated operations. Causing an internet connected to be made is simply that and nothing more.

Accordingly, Drainville fails to teach the elements for which it is relied upon. Drainville fails to support a prima facie obviousness rejection. Combining King fails to cure these deficiencies. The rejection should be withdrawn and all claims allowed.

Improper Interpretation

The Office Action interprets the claimed “a portable computer” as being Drainville’s elements: web server 22 with modem 16 and tapping web server 30 plus its modem. (Office Action page 2; referring to Drainville figure 1). This is not a reasonable interpretation of “a portable computer” as claimed. One of ordinary skill in the art would not interpret two independent servers located in different locations from each other and including their modems as “a portable computer.” The interpretation is not reasonable and is improper. The interpretation fails to comply with MPEP 2111 that requires that “claims must be given their broadest reasonable interpretation consistent with the specification.” Therefore, the basis of the rejection is improper.

If the tapping web server 30 is interpreted as the claimed portable computer, then Drainville still fails to teach or suggest “waking the portable computer from a **sleep mode**” and “returning the portable computer to the **sleep mode**.” The claim language requires that the portable computer be in a sleep mode. Nothing in Drainville teaches or suggests that the tapping web server 30 (figure 1 element 30) is ever in a sleep mode. In fact it teaches the opposite. Drainville teaches the tapping web server as being continuously online and not in a sleep mode. “The tapping web server is permanently connected to the Internet and managing user-initiated requests to access information available at the on-demand web-server

through the Internet.” (Drainville Col. 2, lines 30-34). “[T]he tapping web server hosting at least one web page for receiving requests from the client for accessing information at the remote location...” (Drainville Col. 2, lines 51-53). One of ordinary skill in the art would clearly recognize that a web server hosting web pages that is continuously connected to the Internet does not teach being in a sleep mode. Therefore this interpretation also fails to teach or suggest each and every element of the claim. The combination of Drainville and King fails to teach or suggest the claimed method.

Claim 1 also recites: “with no intervening devices and no intermediary devices”. This element is not taught or suggested since Drainville teaches a complex system involving multiple web servers, multiple modems, and multiple internet connections (see fig. 1). Therefore, this element is not found. Claim 23 is not obvious and a prima facie rejection has not been established.

Since it has been shown that independent claim 23 is not obvious by the combination, then dependent claims 24-25, 33, & 35 are also not obvious. The rejection should be withdrawn and all claims allowed.

Independent Claim 26

Claim 26 was rejected for the same reasons as claim 23 (OA, page 4).

Claim 26 recites:

waking the portable computer from a sleep mode in response to the portable computer receiving a wireless communication directly from the handheld device

For the reasons stated above, these elements are not taught or suggested by Drainville. Thus, the combined references fail to teach or suggest claims 26-28, 34 and 36. Therefore, claims 26-28, 34 and 36 are in condition for allowance.

Independent Claim 29

Claim 29 was rejected for the same reasons as claim 23 (OA, page 4).

Claim 29 recites:

waking the portable computer from a sleep mode in response to the portable computer receiving a wireless communication directly from the handheld device

For the reasons stated above, these elements are not taught or suggested by Drainville. Thus, the combined references fail to teach or suggest claims 29-32 and 37 for the same reasons as presented in relation to claim 23. Therefore, claims 29-32 and 37 are in condition for allowance.

Conclusion

For the reasons set forth above, the claims are now in condition for allowance. An early allowance of the claims is earnestly solicited.

Respectfully submitted,



Peter Kraguljac (Reg. No. 38,520)

(216) 503-5500
(216) 503-5401 (fax)
Kraguljac & Kalnay, LLC
Summit One, Suite 510
4700 Rockside Road.
Independence, OH 44131